ROSARIO R. TINA, Pro Se
JESUS G. TINA, Pro Se
865 Euclid Avenue
San Diego, CA 92114

FILED
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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ________ DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ROSARIO R. TINA and JESUS G. TINA, Plaintiffs,	Case No.: 08CV1004 BTM (POR)
vs.	**RESPONSE TO ORDER TO SHOW CAUSE**
DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A. AND DSL SERVICE COMPANY, Defendants.	Judge: Hon. Barry Ted Moskowitz Complaint Filed: June 5, 2008 Hearing Date: N/A

Plaintiffs files this, their response to the Order to Show Cause, and would state as follows:

In its Order the Court ordered that Plaintiffs show cause why this case should not be dismissed for the following reasons: (1) Pursuant to 15 U.S.C. section 1635, the right of rescission only extends to transactions in which a security interest is acquired in a property that is the principal dwelling place of the borrower, (2) Rosario R. Tina lacks standing because she was not a party to the underlying credit transaction; and (3) Plaintiffs lack standing to prosecute these claims because they belong to the bankruptcy trustee.

In response to the first numbered reason listed above, Plaintiff Jesus G. Tina would show that it was his intent and that he did in fact establish the subject property as his principal residence for a period of one year from the date of closing. Plaintiff would point out the following provision included in the Deed of Trust for the Subject property, to wit: "6. Occupancy. Borrower shall occupy, establish, and use the Property as **Borrower's principal residence** (emphasis added) within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control." (Page 7, paragraph 6, Deed of Trust). Borrower, Plaintiff Jesus G. Tina, fulfilled this provision by establishing the property as his principal residence on the day of closing, March 21, 2006, and using the property as his principal residence for a period of one year, until March 21, 2007. It was his intent to fulfill this provision, which was required by the Defendant as a condition of extending the credit and granting the loan, and the rate and term of the loan were based upon this provision, that the property would be the Borrower's principal residence for a period of one year.

Plaintiff would point out that this was Defendant Lender's requirement. It is disingenuous for Defendant to require that Borrower establish the property as his principal residence as a condition of lending the money, only to have Defendant deny that the Borrower did so after a claim arises. The residency provision was a condition of consummating the closing and the Defendant Lender extracted that promise from Plaintiff, that this would be Borrower's principal place of residence for the one year period from the date of closing. Principal place of residence is a matter of Plaintiff's intent. Defendant Lender's extraction of that condition at the closing table, and the fact that the loan was closed, should be dispositive as to this issue. Defendant lender cannot have it both ways, if the condition was met as a condition of closing the loan, it cannot now be unmet for purposes of this litigation.

In regard to reason number 2, that Rosario R. Tina lacks standing because she was not a party to the underlying credit transaction, Rosario R. Tina would show to the Court that at the time of the underlying credit transaction that she was married to Jesus G. Tina, and that they have been continuously married both before and after the subject transaction and remain so today. The reason for Jesus G. Tina being on the loan in his name only, was a joint decision by a married couple for estate planning and family financial planning purposes. It was always their joint understanding that being married, that they both acquired an interest in the property that either of them acquired during the marriage. As such, Rosario R. Tina has always believed that she had an interest in the subject property by virtue of their marriage and continuing to remain married. In fact, both Rosario Tina and Jesus Tina have shared and contributed to making payments on the subject mortgage. Further, Roasario R. Tina is operating under a Power of Attorney duly authorized by Jesus G. Tina to act in his place and stead due to personal health and other family reasons that prevent Jesus G. Tina from fully participating in certain activities, including this litigation. In any event, should this Honorable Court find that in fact Rosario R. Tina lacks standing as a Plaintiff in this action, the remedy would be to exclude her from the suit, but not to dismiss the action itself. Rosario R. Tina believes, and continues to believe, that as the spouse of Jesus G. Tina with a financial stake in the property, and in fact having contributed financially to the property, that she had the requisite standing to be a party to this action.

Regarding reason number 3, that Plaintiff's lack standing to prosecute these claims because they belong to the bankruptcy trustee, Plaintiffs would show that at the time of the filing of their bankruptcy they were not aware and did not discover a cause of action against Defendants until after their discharge in bankruptcy. Plaintiffs could not assert a claim that they did not know they had. Plaintiff's understood that they had a 3 day right of rescission after the date of the closing to rescind the subject transaction, and that a one year right of rescission if the requisite notice was not provided or if the truth in lending act were violated. It was not until they discovered the 3 year extended right of rescission provided in 15 U.S.C. section 1635(f), that they realized they had this cause of action. Had the bankruptcy trustee inquired as to a potential cause of action, the bankruptcy trustee could have either asserted or abandoned the cause of action. In any event, should this Honorable Court determine that said cause of action resides with the bankruptcy trustee until the trustee either asserts or abandons that right, the remedy would be to allow the bankruptcy trustee to assert the cause of action by intervening in this suit, or abandoning the cause of action, in which case the cause of action is properly asserted by Plaintiffs. It is not unusual for more than one party to have standing to bring an action, and Plaintiff's believe that they would lack standing only at the point where the bankruptcy trustee either asserted the cause of action or indicated that the trustee would not abandon the cause of action to the debtors, Plaintiff's herein. This Honorable Court should allow the bankruptcy trustee to make such a determination before determining that Plaintiffs lack standing.

WHEREFORE, having fully responded to the Order to Show Cause, Plaintiffs respectfully pray that this Honorable Court grant relief in accordance with the foregoing response, and grant such other and further relief as the Court deems equitable, appropriate and just.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Response to Order to Show Cause has been furnished to: J. Barrett Marum, Sheppard, Mullin, Richter & Hampton, LLP, attorneys for Defendants at 501 West Broadway, 19th Floor, San Diego, CA 92101-3598 by U.S. mail with sufficient postage fixed at San Diego, California this ____ day of July, 2008.

Rosario Tina for Jesus Tina
Jesus G. Tina

Rosario Tina
Rosario R. Tina
865 Euclid Avenue
San Diego, CA 92114

SPECIAL POWER OF ATTORNEY:

Form to grant power of attorney to another for the conduct of business and other transactions, with the power remaining effective upon grantor's later disability

I, *Jesus G Tina* of 1220 Manchester Street, National City, *California 91950*, appoint Rosario R Tina of 1220 Manchester Street, National City, *California 91950*, as my attorney-in-fact (agent) with the following powers to be exercised in my name and for my benefit:

1. General Grant of Power. To exercise or perform any act, power, duty, right, or obligation whatsoever that I now have or may hereafter acquired, relating to any person, matter, transaction, or property, real or personal, tangible or intangible, now owned or hereafter acquired by me, including, without limitation, the following specifically enumerated powers. I grant to my agent full power and authority to do everything necessary in exercising any of the powers granted here as fully as I might or could do if personally present, with full power of substitution or revocation, ratifying and confirming all that my agent shall lawfully do or cause to be done by virtue of this power of attorney and the powers granted here;

2. Collection Powers. To forgive, request, demand, sue for, recover, collect, receive, hold all such sums of money debts, dues, commercial paper, checks, drafts, accounts, deposits, legacies, bequests, devises, notes, interests, stock certificates, bonds, dividends, certificates of deposit, annuities, pension, profit sharing, retirement, social security, insurance and other contractual benefits and proceeds, all documents of title, all property, real or personal, intangible or tangible property and property rights, and demands whatsoever, liquidated or unliquidated, now or hereafter owned by, or due, owing, payable or belonging to, me or in which I have or may hereafter acquire an interest; to have, use, and take all lawful means and equitable and legal remedies and proceedings in my name for the collection and recovery of them, and to adjust, sell, compromise, and agree for the same, and to execute and deliver for me, on my behalf, and in my name, all endorsements, releases, receipts, or other sufficient discharges for the same;

3. Real Property Powers. To bargain, contract, agree for, option, purchase, acquire, receive, improve, maintain, repair, insure, plat, partition, safeguard, lease, demise, grant, bargain, sell, assign, transfer, remise, release, exchange, convey, mortgage, and hypothecate real estate and any interest in it (and including any interest which I hold with any other person as joint tenants with full rights of survivorship, or as tenants by the entireties), lands, tenements, and hereditaments, for such price, upon such terms and conditions, as my agent shall determine;

4. Personal Property Powers. To bargain, contract, agree for, purchase, option, acquire, receive, improve, maintain, repair, insure, safeguard, lease, assign, sell, exchange, redeem, transfer, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, merchandise, furniture and furnishings, automobiles, bills, notes, debentures, bonds, stocks, limited partnership interests,

certificates of deposit, commercial paper, money market instruments, and other securities, choses in action and other tangible or intangible personal property in possession or in action, for such price, upon such terms and conditions, as my agent shall determine;

a. Gift Power. To make gifts of any kind, provided, however, that the aggregate of all gifts to one donee other than a charitable donee, in any one year shall not exceed my federal gift tax annual exclusion for the year in which the gifts are made, and this authority shall be non-cumulative [to include gifts to agent by agent, include here and see restrictions on agent's powers at paragraph 22];

5. Contract Powers. To make, do, and transact every kind of business of whatever nature, and also for me and in my name, and as my act and deed, to sign, seal, execute, deliver, and acknowledge such stock certificates, stock powers, assignments separate from certificate, deeds, conveyances, leases and assignments of leases, covenants, indentures, options, letters of intent, contracts, agreements, closing agreements, certificates, mortgages, hypothecations, bills of lading, bills, bonds, debentures, notes, receipts, evidence of debts, releases and satisfaction of mortgage, judgments and other debts, waivers of statutes of limitation, and such other documents and instruments in writing of whatever kind and nature as may be necessary or proper in the premises, as fully as I might do if done in my own capacity;

6. Banking Powers. To make, draw, sign in my name, deliver, and accept checks, drafts, receipts for moneys, notes, or other orders for the payment of money against, or otherwise make withdrawals from any commercial, checking, or savings account which I may have in my sole name or in joint name with my spouse or other person(s), in any bank or financial institution, for any purpose which my agent may think necessary, advisable or proper; and to endorse and negotiate in my name and deliver checks, drafts, notes, bills, certificates of deposit, commercial paper, money market instruments, bills of exchange, or other instruments for the payment of money and to deposit same, as cash or for collection, and cash into any commercial, checking, or savings account which I may have in my sole name or in joint name with my spouse or other person(s), in any bank or financial institution; and to carry on all my ordinary banking business;

7. Tax Returns. To prepare, execute, and file reports, returns, declaration, forms, and statements for any and all tax purposes including income, gift, real estate, personal property, intangibles tax, single business tax, or any other kind of tax whatsoever, to pay such taxes and any interest or penalty or additions to make and file objections, protests, claims for abatement, refund or credit in relation to any such tax proposed, levied or paid; to signify, as may be required by Section 2513 of the United States Internal Revenue Code of 1954, as amended, or any corresponding section of any future United States law, my consent to having one-half of any gift(s) made by my spouse considered as made by me; to represent me and to institute and prosecute proceedings in court or before any administrative authority to contest any such tax in whole or in part or for recovery of any amount paid in respect of any such tax, to defend or settle any amount paid in respect of any such tax, to give full and final receipt for any refund or credit and to endorse and collect any check or other voucher; to pay any and all such taxes and any interest, penalty, or other additional amounts, to employ attorneys, accountants, or other

representatives and grant powers of attorney or letters of appointment for any of the purposes stated above;

8. Safe Deposit Box. To have access to any safe deposit box of which I am a tenant or co-tenant with full power to withdraw or change from time to time the contents of it; and to exchange or surrender the box and keys to it, renew any rental contract for it, and to do all things which any depository, association or bank, or its agents may require, releasing the lessor from all liability in connection with it;

9. Employ Agents. To employ and compensate agents, accountants, attorneys, real estate brokers, and other professional assistance and to retain and compensate such persons for services rendered; to waive any attorney-client privilege;

10. Motor Vehicles. To apply for a Certificate of Title upon, and endorse and transfer title, for any automobile, or other motor vehicle, and to represent in such transfer assignment that the title to the motor vehicle is free and clear of all liens and encumbrances except those specifically set forth in such transfer assignment;

11. Settlement Powers. To adjust, settle, compromise, or submit to arbitration any accounts, debts, claims, demands, disputes, or matters which are now subsisting or may hereafter arise between me or my agent and any other person or persons, or in which any property, right, title, interest, or estate belonging to or claimed by me may be concerned;

12. Legal Actions. To commence, prosecute, enforce, or abandon, or to defend, answer, oppose, confess, compromise, or settle all claims, suits, actions, or other judicial or administrative proceedings in which I am or may hereafter be interested, or in which any property, right, title, interest, or estate belonging to, coming to or claimed by me may be concerned;

13. Dividends. To receive all dividends which are or shall be payable on any and all shares of stock in any corporation which may stand in my name on the books of such corporation or to which I may be, in equity or otherwise, beneficially entitled; or to elect to reinvest such dividend, all as my agent may deem appropriate;

14. Vote Stock. To vote at all stockholder meetings of corporations and otherwise to act as my proxy or representative in respect of any shares now held or which may hereafter be acquired by me and for that purpose to sign and execute any proxies or other instruments in my name and on my behalf;

15. Transfer Stock. To sell, assign, transfer, and deliver all and any shares of stock standing in my name on the books of any corporation, or to which I may be, in equity or otherwise, beneficially entitled, and for the purpose to make and execute all necessary acts of assignment and transfer;

16. Insurance and Employee Benefit Plans. To redeem, surrender, borrow, extend, cancel, amend, pledge, alter, or change, including change of beneficiary of any insurance policies in which I may have an interest, as my agent may deem proper and expedient, and for such purpose to sign and execute any documents, affidavits, or forms required in

my name and on my behalf, except however, my agent shall have no power and authority over life insurance policies I may own on my agent's life; and to exercise all powers and options involving retirement programs, compensation plans, pension, profit sharing, and other employee benefit plans;

17. Social Security and Government Benefits. To make application to any governmental agency for any benefit or government obligation to which I may be entitled; to endorse any checks or drafts made payable to me from any government agency for my benefit, including any Social Security checks;

18. Business Interests. To continue to conduct or participate in any business in which I may be engaged or to carry out, modify, or amend any agreement to which I may be a party, and to sell, exchange, modify, or terminate such interest to or with such person or persons as my agent may deem proper and on such terms and with such security as my agent may deem appropriate; execute partnership agreements, and amendments; incorporate, reorganize, merge, consolidate, recapitalize, sell, liquidate, or dissolve any business; elect or employ officers, directors, and agents; carry out the provisions of any agreement for the sale of any business interest or the stock in it;

19. Borrow. To borrow from time to time such sums of money and upon such terms as my attorney may think expedient for or in relation to any purpose or object which my agent may deem proper or expedient, unsecured or upon the security of any of my property, whether real or personal or otherwise, and for such purpose to give, execute in my name, deliver, and acknowledge promissory notes and/or renewals of, mortgages, pledges, and guaranties with such powers and provisions as my agent may think proper or requisite;

20. Debts and Expenses. To pay, compromise, and settle any and all bills, loans, notes, or other forms of indebtedness owed by me at the present time, or which may be owed by me or incurred by my agent for my benefit at any time in the future, and to incur and pay from any of my assets or property all reasonable expenses in connection with the control, management, and supervision of my property and the maintenance, support, care, and comfort of myself and those dependent upon me, including reasonable compensation for the services of my agent, and including the fees and charges of such agents, attorneys, accountants, or others as my agent may, in the exercise of discretion, employ in the management of any of my affairs;

21. Investments. To invest and reinvest in loans, stocks, bonds, including United States Bonds purchased at a discount but redeemable at face value, securities, real estate, life insurance, annuities, or endowment policies, or combinations of them, or in any other investment which my agent may deem proper; to reduce the interest rate at any time and from time to time on any mortgage or land contract; to deal with and give instructions to any brokerage firm with respect to the purchase, sale, or other disposition of securities and other assets, add assets to or withdraw assets from any account in my name, and sign any representation, certification, or agreement, including agreements regarding margin, option trading, or commodities accounts, that my agent deems advisable;

22. Interpretation and Governing Law. This instrument is to be construed and interpreted as a general durable power of attorney. The enumeration of specific powers here is not intended to, nor does it, limit or restrict the general powers granted here to my agent. Paragraph headings are for convenience only and are not to be deemed to be part of this instrument. This instrument is executed and delivered in the state of California, and the laws of the state of California shall govern all questions as to the validity of this power and the construction of its provisions;

23. Third-Party Reliance. Third parties may rely upon the representation of my agent as to all matters relating to any power granted to my agent, and no person who may act in reliance upon the representations of my agent or the authority granted to my agent shall incur any liability to me or my estate as a result of permitting my agent to exercise any power, and for the purpose of inducing third parties to rely on this power of attorney, I warrant that, if this power of attorney is revoked by me or otherwise terminated, I will indemnify and save such third party harmless from any loss suffered or liability incurred by such third party in good faith reliance on the authority of my agent prior to such third party's actual knowledge of revocation or termination of this power of attorney whether such termination is by operation of law or otherwise. This warranty shall bind my heirs, devises, and personal representatives;

24. Disability of Principal. This power of attorney shall not be affected by my disability. The authority of my agent shall be exercisable notwithstanding my later disability or incapacity or later uncertainty as to whether I am alive. Any act done by my agent during any period of my disability or incompetency or during any period of uncertainty as to whether I am alive shall have the same effect as though I were alive, competent, and not disabled, and shall inure to the benefit of and bind me, my heirs, devisees, and personal representatives;

25. Photographic Copies. Photographic or other facsimile reproductions of this executed power may be made and delivered by my agent, and may be relied upon by any person to the same extent as though the copy were an original. Anyone who acts in reliance upon any representation or certificate of my agent, or upon a reproduction of this power, shall not be liable for permitting my agent to perform any act pursuant to this power.

I have signed and delivered this general durable power of attorney on 5-19-08 _______ *[date]*.

Rosario R Tina [signature] - ATTORNEY-IN-FACT

Jesus Tina [signature]
JESUS G. TINA

Witnesses:

_______________________ _______________________

STATE OF California)
COUNTY of San Diego)

On MAY 19, 2008 before me, ODILON LUNA SANTOS
personally appeared JESUS G. TINA
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

ODILON LUNA SANTOS
COMM. #1536692
Notary Public-California
SAN DIEGO COUNTY
My Comm. Exp. Dec 20, 2008

KUMARA PRATHIPATI, MD
2332 Reo Drive
San Diego, CA 92139
Tel. # (619) 267-0553
Fax # (619) 267-1552

May 16, 2008

To Whom It May Concern:

This is to certify that Mr. Jesus Tina born on June 28, 1927 is a patient in this medical facility. Mr. Tina is suffering from the following diagnoses:

1. Coronary artery disease
2. Status post cerebro-vascular accident
3. Slurring of speech
4. Hypertension
5. Congestive heart failure
6. Gastro-esophageal reflux disease
7. Gout

This certification is being issued for whatever good purpose it will serve my patient. Should you have any questions, you can reach me at the above address and telephone number.

Sincerely,

Kumara Prathipati, MD

SUBSCRI[illegible] ... RE ME
THI 19TH DAY OF MAY 2008
BY JESUS TINA

ODILON LUNA SANTOS
COMM. #1536892
Notary Public-California
SAN DIEGO COUNTY
My Comm. Exp. Dec 20, 2008

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN DIEGO)

J U R A T

Subscribed and sworn to before me on this 19TH day of MAY, 2008, by JESUS TINA

, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

ODILON LUNA SANTOS
COMM. #1536892
Notary Public-California
SAN DIEGO COUNTY
My Comm. Exp. Dec 20, 2008
ESI1 ESI1

ODILON LUNA SANTOS
Notary Public
Until December 20, 2008
Commission # 1536892